

DATE: March 7, 1988

TO: Betty Junghans, LTD Representative - Risk
Management

FROM: City Attorney

SUBJECT: Long-Term Disability Payments Beyond Twelve
Months for Outside Vocational Services

You recently asked this office if an employee qualifies for an extension of long-term disability benefits beyond the twelve-month period described in paragraph 4.01(a) of the Plan Document when the employee has not elected to participate in The City of San Diego's Rehabilitation Program. Article IV of the Long-Term Disability Plan Document sets forth the following standards of eligibility:

ELIGIBILITY FOR LONG-TERM DISABILITY BENEFITS

- 4.01 Each Eligibility Employee who is a Participant shall be entitled to be paid from the Plan the monthly disability benefit determined in Article V during the period specified. A Participant will be considered totally disabled if:
- (a) The Participant is certified by a licensed physician that he is unable to perform any and/or all duties of present occupation during a twelve (12) consecutive months' income payout period, and
 - (b) after the twelve (12) months of disability, the Participant is unable to engage in any gainful occupation or employment for which the Participant is or becomes reasonably fitted by education, training or experience.

In addition, section 7.07(m) i) describes the Long-Term Disability Vocational Rehabilitation Program as follows:

- (m) The Long-Term Disability Vocational Rehabilitation Program is a voluntary program and can not be made mandatory.
 - i) Participants who have sustained an industrial injury/illness shall participate in the Vocational Rehabilitation program as more completely

described in Administrative Regulation 70.50, Administration of Vocational Rehabilitation Program. Long-Term Disability Benefits may be extended beyond the twelve (12) month period following the date of disability for industrial injuries/illnesses providing the following criteria are met:

- (A) The Participant has been identified as a potential candidate as more clearly defined in Administrative Regulation 70.50.
- (B) The objectives for rehabilitation and/or vocational retraining are:
 - 1. Specifically defined and within realistic goals;
 - 2. Subject to established time parameters for completion;
 - 3. Approved by both the Vocational Rehabilitation and Long-Term Disability Income Plan Administrators; and
 - 4. Commenced prior to the expiration of Long-Term Disability Benefits.
- (C) Other supporting factors may be considered. Such factors include:
 - 1. Retirement membership,
 - 2. Years of City service,
 - 3. Performance evaluations, and
 - 4. The Participant's attitude and motivation.

ii) Participants who have sustained a non-industrial injury/illness shall be provided Vocational Rehabilitation services in order to return to City employment only. Vocational Rehabilitation services shall not be provided for employment outside the City. Long-Term Disability Benefits shall not be extended beyond the twelve (12) month period following the date of disability.

These provisions clearly provide that while long-term disability benefits are mandatory under the conditions set forth under paragraph 4.01(a), the continuation of benefits beyond that

twelve-month period is discretionary under section 7.07(m) i) even when all of the criteria set forth are met.

The purpose underlying section 7.07(m) i) is to extend long-term disability benefits beyond the twelve-month period referred to in paragraph 4.01(a) in order to assist those employees currently undergoing rehabilitation to once again commence active employment with The City of San Diego either in their former capacity or in another job classification for which they become qualified during the rehabilitation program. A reading of both sections 4.01(a) and 7.07(m) leads us to believe that it is appropriate to provide an extension of LTD benefits beyond the twelve months only for those otherwise qualified employees who are participating in the City's "in house" Vocational Rehabilitation Program for placement within The City of San Diego. The City of San Diego is not, however, under any obligation to provide benefits beyond the twelve-month period described in section 401(a) to employees who refuse to participate in the City's Rehabilitation Program and who are seeking placement in the private sector.

JOHN W. WITT, City Attorney

By

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